

(c) When costs are recognized and recorded as an obligation in the accounts of the SHD.

(d) Federal-aid participation may not exceed the statutory limitation for the particular Federal-aid funds used.

(e) On projects financed under 23 U.S.C. 120(d) for the elimination of hazards of railway-highway crossings, participation in the right-of-way cost may not exceed 70 percent, with no increase in public land States.

(f) On public land highways and on defense access roads as defined in title 23 U.S.C. 101a and 210, the extent of Federal participation will be in accordance with specific agreements between FHWA and the SHD.

(g) Reimbursement of costs shall be made only after the project agreement has been executed.

#### § 710.304 Reimbursement policy.

(a) *Real property acquisition.* Federal funds may participate in payments made by the SHD for real property or interests therein acquired in accordance with applicable State and Federal law and FHWA directives. Unless otherwise provided, Federal funds may not participate in the costs of real property not incorporated into the final highway right-of-way.

(b) *Incidental expenses.* (1) Federal funds may participate in any expenditure of a type normal to the operation of the SHD and incidental to the acquisition of rights-of-way, whether the acquisition is by negotiation or condemnation.

(2) Federal participation will not be allowed in charges for the administrative and overhead expenses of either the headquarters or field offices of the SHD or other publicly maintained land acquisition organizations. When a supervisory or administrative employee is engaged in work chargeable to a specific project, Federal participation may be allowed in claims for salary and related expenses on that project in accordance with part 140, subpart G of this chapter.

(3) Federal funds may participate in the usual costs and disbursements chargeable to a condemning authority under State law as part of a valid bill of costs approved by a court in a condemnation proceeding. However,

whether or not the costs are included in court judgments or awarded as court costs in litigated cases, Federal participation will not be permitted in the cost of a property owner's attorney fees, appraiser fees, expert witness fees, or similar costs which are paid by the SHD in connection with acquisition of rights-of-way, with the following exceptions:

(i) Where the final judgment is that the property cannot be acquired by condemnation, or

(ii) The proceeding is abandoned by the acquiring agency, or

(iii) An inverse condemnation proceeding is successfully maintained.

In any of the foregoing exceptions, participation will be limited to such sum as will in the opinion of the court or the head of the agency on whose behalf the proceeding was instituted, reimburse the owner for reasonable costs, disbursements, and expenses he actually incurred, including reasonable attorney, appraisal, and engineering fees.

(4) Federal funds may participate in payments by the SHD to a property owner for the following costs necessarily incurred in transferring property to the State:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying real property.

(ii) Penalty costs for prepayment of preexisting recorded mortgage entered into in good faith.

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the SHD or effective date of possession by the SHD, whichever is earlier.

(5) *Technical guidance and training costs.* Where State employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political subdivision to accomplish real property acquisition or in escalating such project operations to an acceptable level of performance, Federal funds may participate in the costs of such project activity.

(c) *Taxes.* Federal participation will not be permitted in the payment of special assessments or in the payment of taxes, except as provided in paragraphs (b)(4) and (d)(1) of this section.

(d) *Property management.* (1) Federal funds may participate in the net cost incurred by the SHD in the leasing, rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property acquired for right-of-way purposes. Taxes or payments in lieu of taxes required to be paid by a SHD are a legitimate property management expense and may be deducted from the gross rentals received.

(2) Federal funds may not participate in property management or demolition costs on excess lands acquired by the SHD when Federal participation in the costs of the related right-of-way acquisition is based on the provisions of paragraph (m)(1) of this section.

(3) Federal funds may participate in the net costs incurred by the SHD in the leasing, rental, maintenance, rodent control, protection and sale of excess lands when Federal participation in the cost of the related right-of-way acquisition is in accordance with paragraph (m)(2) of this section. In such instances, Federal funds may participate in the disposal or removal of improvements only when required by law or when such action will clearly enhance the value of the excess.

(4) Where right-of-way is acquired for future construction, the SHD may desire to close out the project before the net amount of rentals or salvage has been established. In such event, Federal participation may be established on the basis of the present worth of the estimated future net rentals and salvage.

(e) *Access rights.* (1) Where full or partial control of access is obtained on an existing highway, Federal funds may participate in the cost of access rights, whether or not other real property interest is acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

(2) Federal funds may not participate in payments for access rights where the controlled access highway is on a new location.

(f) *Material sites.* Subject to the provisions of part 635, subpart A of this

chapter, Federal funds may participate as either a right-of-way or construction item in the costs of acquiring land or interests therein outside the normal right-of-way for the purpose of obtaining road building material to be made available to the contractor.

(g) *Permanent and temporary easements.* The cost of acquiring interests in lands outside the normal right-of-way is eligible for Federal participation as a right-of-way or construction item:

(1) For permanent use; such as for drainage or slope easements.

(2) For temporary use; such as for construction purposes or for right-of-way clearance.

(h) *Damages.* Federal funds may participate in severance or consequential damages, or both resulting from a highway project upon an affirmative showing that the acquiring agency is obligated to pay such damages under applicable law, provided that such damages are of a type generally compensable in eminent domain, and are determined by FHWA to be generally reimbursable on Federal-aid highway projects. Payments made for personal property (except as otherwise provided), loss of business or goodwill, circuity of travel, diversion of traffic, and other items of damage not generally compensable in eminent domain are not eligible for Federal participation.

(i) *Utility and railroad real property.* (1) If a utility or railroad is displaced by a federally assisted highway project, Federal funds may participate in the cost of real property acquired by a SHD, utility, or railroad to replace real property owned by the railroad or utility and conveyed to the SHD for highway right-of-way as provided in part 140, subpart I and part 645, subpart A of this chapter.

(2) Federal funds may participate in the cost of acquisition of non-operating real property of a utility or railroad in the same manner as for other privately owned property.

(j) *Court deposits and interest thereon.* (1) Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:

(i) The amount of the SHD's approved estimate of just compensation, or

(ii) The amount established by court order, or

(iii) The amount established by other means required under State law as a condition of the SHD's obtaining possession of the right-of-way.

When the amount deposited exceeds the amount of the final settlement or award, the Federal share of the excess deposit shall be promptly credited to the project or be deducted from any payment due the SHD from FHWA on any Federal-aid project.

(2) Where, in the opinion of FHWA, the total payments on progress vouchers for the Federal share of court deposits become excessive, further payment may be withheld until the situation is remedied. The Federal share of the total amount of court deposits, plus the Federal share of other eligible expenses incurred on a project may not exceed the Federal funds included in the project agreement.

(3) Federal funds may participate in the cost of interest on the amount of the deposit into court for a period of not to exceed 45 days, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may not participate in such interest costs where the deposit is available but the owner chooses not to withdraw it.

(4) Where a condemnation settlement or award exceeds the amount deposited into court, Federal participation may be allowed in interest paid on the amount in excess of the deposit from the date of the original deposit until the date of settlement or award. Where court procedures prevent the amount from being delivered immediately following settlement or award, Federal participation may be allowed in interest paid on the excess amount for a period not to exceed 45 days following such settlement or award. When the SHD appeals an award, Federal participation may be allowed in the required interest payment on the excess until 45 days after the final determination.

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner directly or by deposit with the court, except in cases of unusual cir-

cumstances in accordance with SHD procedures that have been approved by the FHWA. Where the final settlement or award exceeds the amount which could have been deposited or paid, Federal participation in interest costs on the amount of the excess may be allowed from the date of physical entry upon the parcel, in accordance with paragraph (j)(4) of this section.

(k) *Tenant owned improvements.* Federal participation may be allowed in payments made to a tenant for his buildings, structures, or other improvements which are acquired by a State to the extent that such payment is not a duplication of any payments otherwise authorized by law.

(l) *Exchanges of State owned lands.* When State owned lands are exchanged for lands required for highway purposes, Federal funds may participate in the current fair market value of the land being exchanged. This concept is conditioned in that participation in the total consideration, including land, any cash payments, and any construction features to mitigate damages, may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

(m) *Excess acquisitions.* When only a portion of a property is required for highway right-of-way or highway related needs and the SHD elects to acquire a larger portion or the whole property, Federal participation will be in accordance with one of the following alternatives selected by the SHD for statewide application, as set forth in its Right-of-Way Operations Manual. The provisions of this paragraph do not apply to uneconomic remnants.

(1) *First alternative.* Federal participation in the fair market value of the portion of the property required for the highway project plus damages, if any, to the remainder.

(2) *Second alternative.* (i) The purpose of this alternative is only to provide an alternative means of establishing the amount of damages where only a part of a property is required for federally assisted highway project purposes. There will be no Federal participation in any relocation costs associated with that part of the tract acquired which is outside the right-of-way.

(ii) An initial installment of the Federal pro rata share of the cost of the land required for the project determined by apportioning the land cost of the entire tract between the part required and part remaining solely on the basis of area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements.

(iii) A final installment, representing the Federal share of damages to the remainder, will be the difference between the initial costs of the excess property, prorated as in paragraph (m)(2)(ii) of this section, and the price realized at a public sale of the excess property. The sale must be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. Should condemnation proceedings prevent sale of the excess property within the time limits described, the excess may be disposed of within 12 months of when the SHD can legally do so.

(iv) Two or more excess areas may be combined and sold in one transaction if the SHD anticipates a higher overall return by such action.

(v) Should the SHD not dispose of the excess property within the time limits set forth in paragraph (m)(2)(iii) of this section, Federal participation shall be limited as under paragraph (m)(2)(ii) of this section unless an exception is granted by FHWA or unless an alternative disposal procedure has been accepted by FHWA.

(n) *Uneconomic remnants.* Federal funds may participate in the acquisition costs of uneconomic remnants whether or not the remnants are incorporated in the highway right-of-way.

(o) *Acquisition in connection with other Federal or federally-assisted programs.* (1) Rights-of-way may be acquired by the SHD for a Federal-aid highway in coordination or cooperation with other Federal or federally assisted programs. The SHD and the agency involved shall set forth in an agreement or memorandum of understanding the responsibilities of each in the acquisition of real property involved and the basis for the sharing of costs. Such agreements should be executed during early stages of project development, and will not

jeopardize future Federal participation in costs to the SHD, if the agreement does not constitute a binding request for conveyance of specified lands. The agreement should be in effect when a request for authorization to acquire is submitted to FHWA.

(2) Federal funds may participate in obligations for costs incurred by a SHD after FHWA authorization to proceed. For purposes of paragraph (o) of this section an obligation is incurred by the SHD on the date that the SHD commits itself to the acquiring agency through a binding request for conveyance of specified lands.

(3) Federal (FHWA) participation in costs incurred by the SHD shall be determined on the following basis, unless prior approval is obtained from FHWA for participation on some other basis:

(i) Where the project of the acquiring agency, such as an urban renewal agency, is developed without consideration of the highway project, and the land has been cleared at the time the SHD requests conveyance of specified lands, Federal (FHWA) participation may not exceed its pro rata share of the appraised value of the cleared land required. The appraised value shall be mutually acceptable to the SHD and the other agency involved. Where the same conditions exist except that improvements have not been removed at the time of request for conveyance, Federal (FHWA) participation may not exceed the fair market value as determined by costs to the acquiring agency.

(ii) Where the project of the acquiring agency, such as an urban renewal agency, was continued after written knowledge that highway project would be involved, whether or not the exact location thereof was known, Federal (FHWA) participation may not exceed the fair market value as determined by cost to the acquiring agency. It would not matter whether any improvements were removed before or after a request for conveyance is submitted. The SHD must assure itself that such real property acquisitions are in compliance with title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, *et seq.*).

(iii) "Cost to the acquiring agency," for purposes of Federal (FHWA) participation, may include the fair market value payment, incidental acquisition expenses, settlement costs, and clearance and demolition costs, subject to the agreement between the parties, but shall exclude interest on borrowed money, and administrative and overhead expenses. (See also 49 CFR 24.6 regarding relocation matters.)

(iv) When the "cost to acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on an area basis where only a part of a parcel is required for highway purposes.

(4) Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights-of-way for Federal or Federal-aid highway projects, FHWA may accept certifications of another Federal agency that the work has been performed in accordance with its governing regulations.

(p) *Separation of functions.* (1) Except as provided in 23 CFR part 750, subpart D, Federal funds may not participate in the cost of acquisition of a property, or related incidental costs, where:

(i) [Reserved]

(ii) Payments have been delivered in person by those who have negotiated, appraised, or acted as reviewing appraiser for the property, or

(iii) Payments have been delivered in person by the attorney who negotiated a settlement with the owner.

(2) The provisions of paragraph (p)(1) of this section apply whether such person was a salaried employee of the SHD or other acquiring agency, or was retained on a fee basis.

(q) *Construction in mitigation of damages.* Costs of construction performed by the SHD in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal

funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed \$500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974, as amended at 40 FR 41524, Sept. 8, 1975; 41 FR 9321, Mar. 4, 1976; 50 FR 34092, 34093, Aug. 23, 1985; 54 FR 47075, Nov. 9, 1989; 59 FR 25327, May 16, 1994]

#### § 710.305 Support for claims.

(a) *Progress and final claims.* (1) Any progress or final claim for Federal fund reimbursement of expenditures made for right-of-way shall be supported by the following documents and information:

(i) A right-of-way map or plan showing the rights-of-way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right-of-way such as structures, improvements, and fences.

(ii) Statement of cost of right-of-way showing:

(A) Parcel number.

(B) Cost of parcel.

(C) Cost of excess land, if any, acquired from same ownership.

(D) Credits by parcel or project.

(E) Incidental expenses by parcel or project.

(F) Cost of construction performed in mitigation of damages on a parcel basis, if claimed as a right-of-way item.

(2) The required documents and information may be submitted with the claim or made available in the SHD's files in readily identifiable form as determined appropriate by the FHWA in consultation with the SHD. Further, where a right-of-way map or plan which meets the requirements set forth in paragraph (a)(1)(i) of this section has been previously submitted, the FHWA may accept such map or plan for final or progress claim purposes.